

**DAVISON • EASTMAN • MUÑOZ  
LEDERMAN & PAONE P.A.**

DUANE O. DAVISON  
EDWARD C. EASTMAN, JR. I  
ROBERT F. MUÑOZ • ▼  
PETER H. LEDERMAN ▲  
JAMES A. PAONE, II I  
JAMES M. McGOVERN, JR. ▼ ▲  
ROBERT S. BONNEY, JR. □ ▼  
TIMOTHY D. LYONS I □  
ANNE MARIE MAZZU •  
CHRISTINA D. HARDMAN O'NEAL  
BLAKE R. LAURENCE • □  
MATTHEW K. BLAINE □  
CHRISTOPHER D. OLSZAK I  
BRIAN J. CHABAREK ▼  
GREG S. GARGULINSKI ▼  
DOUGLAS J. WIDMAN □ ▼  
DENNIS M. GALVIN

COUNSEL  
ROBERT F. McANANLY  
MANNY J. ALVELO ▼  
NICOLE SOROKOLIT CRODDICK ▼

**NOAH A. SCHWARTZ**

nschwartz@demlplaw.com  
100 Willow Brook Road, Suite 100  
Freehold, NJ 07728

DIRECT DIAL NUMBER  
732-410-2386  
DEPARTMENT FAX NUMBER  
732-810-1574  
NJ ATTORNEY ID NUMBER  
035582009

OF COUNSEL  
KERRY J. MORGAN  
DANIEL D. OLSZAK  
TRACEE A. DANNER

ANDREW J. BALL □  
PETER A. CHACANIAS  
NOAH A. SCHWARTZ □

CERTIFIED BY THE SUPREME COURT  
OF NEW JERSEY AS A:  
I CIVIL TRIAL ATTORNEY  
□ CRIMINAL TRIAL ATTORNEY  
▲ MUNICIPAL COURT ATTORNEY

• LL.M. IN TAXATION  
□ R. 1:40 QUALIFIED MEDIATOR

OTHER STATE ADMISSIONS:  
▼ NEW YORK  
□ PENNSYLVANIA  
▲ ILLINOIS

WWW.DEMPLPLAW.COM

April 16, 2018

MR. MICHAEL CONTURSO  
State Farm Insurance Companies  
P.O. Box 106169  
Atlanta, GA 30348

**Re: Personal Choice Dental Associates, PA**  
**Claim No. 30-8H89-841**  
**Policy No. 90-B4-6061-4**  
**Date of Loss: April 2, 2016**  
**My File No. 2203-001**

Dear Mr. Conturso:

Enclosed please find a courtesy copy of the Affidavit of Service, track assignment notice, CIS, Summons and Complaint regarding the above captioned matter.

Very truly yours,

  
NOAH A. SCHWARTZ

NAS:sr

Encs.

cc: Personal Choice Dental Assoc.

ANTHONY J. VITALE, DMD and PERSONAL  
CHOICE DENTAL ASSOCIATES, PA  
(Plaintiff)  
vs.

: SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
: MONMOUTH COUNTY

STATE FARM FIRE AND CASUALTY  
COMPANY  
(Defendant)

: DOCKET NO. MON-L 1137-18

: CIVIL ACTION

: AFFIDAVIT OF SERVICE

I declare that I am a citizen of the United States, over the age of eighteen (18) years and not a party to this action. And that within the boundaries of the State where service was effected, I was authorized by law to perform said service.

SERVICE: I served STATE FARM FIRE & CASUALTY COMPANY by serving  
ROBYN MATYISIN with the following documents

X Summons and Complaint and Jury Demand        Notice of Lis Pendens        Notice of Motion  
       Order to Show Cause X Other: Case Information Statement and Track Assignment Notice

at ( ) Home address: \_\_\_\_\_

(X) Business address: 300 Kimball Drive, Parsippany, New Jersey 07054

on 4/12/18 at 11:25 a.m.  
(Date) (Time)

MANNER OF SERVICE: Service was accomplished:

- ☒ By personally delivering copies to the person/authorized agent of entity being served.  
☐ By leaving, during office hours, copies at the office of the person/entity being served, leaving same with the person apparently in charge thereof.  
☐ By leaving copies at the dwelling house or usual place of abode of the person being served, with a member of the household, 14 years or older and explaining the general nature of the papers.  
☐ By posting copies in a conspicuous manner to the address of the person/entity being served.

DESCRIPTION: Description of person being served:  
45 F W 5'3 130 BRN UNDERWRITING CLERK  
Age Sex Race Height Weight Hair Relationship

NON-SERVICE: After due search, careful inquiry and diligent attempts at the address(es) listed above, I have been unable to effect process upon the person/entity being served because of the following reason(s):

☐ Unknown at address ☐ Evading service ☐ Moved, left no forwarding address  
☐ Address does not exist ☐ Service canceled by litigant ☐ Unable to serve timely  
☐ Other: \_\_\_\_\_

SERVICE ATTEMPTS: Service was attempted on \_\_\_\_\_  
(Dates and Times)

I declare, under penalty of perjury that the information contained herein is true and correct and this Affidavit was executed on  
4/12/18 at Old Bridge, New Jersey.

Sworn and subscribed to this  
12 day of April, 2018

A Notary Public of the State of NJ  
Diana J. Tedesco  
Notary Public, State of New Jersey  
ID# 2370887  
My Commission Expires July 24, 2018

CHARLES TEDESLO  
Subpoenas Plus, Inc.  
9 Oakland Road  
Old Bridge, New Jersey 08857  
Phone: (732) 607-1082  
Fax: (732) 607-1724

## TRACK ASSIGNMENT NOTICE

COURT TELEPHONE NO. (732) 677-4240  
COURT HOURS 8:30 AM - 4:30 PM

DATE: MARCH 30, 2018  
RE: VITALE ANTHONY VS STATE FARM FIRE & CA SUALTY C  
DOCKET: MON L -001137 18

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 1.

DISCOVERY IS 150 DAYS AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE PRETRIAL JUDGE ASSIGNED IS: HON OWEN C. MCCARTHY

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 003  
AT: (732) 677-4262 EXT 4262.

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A  
CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING.  
PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE  
WITH R.4:5A-2.

**ATTENTION:**

ATT: PETER A. CHACANIAS  
DAVISON EASTMAN MUNOZ LEDERMAN  
100 WILLOWBROOK RD STE 100  
FREEHOLD NJ 07728

## ECOURTS



## Civil Case Information Statement

### Case Details: MONMOUTH | Civil Part Docket# L-001137-18

**Case Caption:** VITALE ANTHONY VS STATE FARM FIRE  
CASUALTY CO

**Case Initiation Date:** 03/30/2018

**Attorney Name:** PETER AARON CHACANIAS

**Firm Name:** DAVISON EASTMAN MUNOZ LEDERMAN &  
AONE

**Address:** 100 WILLOWBROOK RD STE 100  
FREEHOLD NJ 07728

**Phone:**

**Name of Party:** PLAINTIFF : Vitale, Anthony, J

**Name of Defendant's Primary Insurance Company**

**(if known):** State Farm Fire & Casualty Company

**Case Type:** OTHER INSURANCE CLAIM (INCLUDING  
DECLARATORY JUDGMENT ACTIONS)

**Document Type:** Complaint with Jury Demand

**Jury Demand:** YES - 6 JURORS

**Hurricane Sandy related?** NO

**Is this a professional malpractice case?** NO

**Related cases pending:** NO

**If yes, list docket numbers:**

**Do you anticipate adding any parties (arising out of same  
transaction or occurrence)?** NO

**THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE**

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

**Do parties have a current, past, or recurrent relationship?** YES

**If yes, is that relationship:** Business

**Does the statute governing this case provide for payment of fees by the losing party?** NO

**Use this space to alert the court to any special case characteristics that may warrant individual  
management or accelerated disposition:**

**Do you or your client need any disability accommodations?** NO

**If yes, please identify the requested accommodation:**

**Will an interpreter be needed?** NO

**If yes, for what language:**

**I certify that confidential personal identifiers have been redacted from documents now submitted to the  
court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b)**

**03/30/2018**

**Dated**

**/s/ PETER AARON CHACANIAS**

**Signed**

Douglas J. Widman, Esq. (009671973)

**DAVISON, EASTMAN MUÑOZ**

**LEDERMAN & PAONE, P.A.**

Monmouth Executive Center

100 Willow Brook Road, Suite 100

Freehold, New Jersey 07728

(732) 462-7170

(732) 462-8955 - fax

Attorneys for plaintiffs, Anthony J. Vitale, DMD and Personal Choice Dental Associates, PA

ANTHONY J. VITALE, DMD AND  
PERSONAL CHOICE DENTAL  
ASSOCIATES, PA,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY  
COMPANY,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO.:

CIVIL ACTION

**SUMMONS**


STATE OF NEW JERSEY TO:

**STATE FARM FIRE & CASUALTY COMPANY**

The plaintiff, named above, has filed a lawsuit against you in the Superior Court of New Jersey. The complaint attached to this summons states the basis for this lawsuit. If you dispute this complaint, you or your attorney must file a written answer or motion and proof of service with the deputy clerk of the Superior Court in the county listed above within 35 days from the date you received this summons, not counting the date you received it. (A directory of the addresses of each deputy clerk of the Superior Court is available in the Civil Division Management Office in the county listed above and online at [http://www.judiciary.state.nj.us/pro se/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/pro se/10153_deptyclerklawref.pdf).) 3If the complaint is one in foreclosure, then you must file your written answer or motion and proof of service with the Clerk of the Superior Court, Hughes Justice Complex, P.O. Box 971, Trenton, NJ 08625-0971. A filing fee payable to the Treasurer, State of New Jersey and a completed Case Information Statement (available from the deputy clerk of the Superior Court) must accompany your answer or motion when it is filed. You must also send a copy of your answer or motion to plaintiff's attorney whose name and address appear above, or to plaintiff, if no attorney is named above. A telephone call will not protect your rights; you must file and serve a written answer or motion (with fee of \$135.00 and completed Case Information Statement) if you want the court to hear your defense.

If you do not file and serve a written answer or motion within 35 days, the court may enter a judgment against you for the relief plaintiff demands, plus interest and costs of suit. If judgment is entered against you, the Sheriff may seize your money, wages or property to pay all or part of the judgment.

If you cannot afford an attorney, you may call the Legal Services office in the county where you live or the Legal Services of New Jersey Statewide Hotline at 1-888-LSNJ-LAW (1-888-576-5529). If you do not have an attorney and are not eligible for free legal assistance, you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal services Offices and Lawyer Referral services is available in the Civil Division Management Office in the county listed above and online at [http://www.judiciary.state.nj.us/prose/10153\\_deptyclerklawref.pdf](http://www.judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf).

  
MICHELLE M. SMITH  
Clerk of the Superior Court

Dated: April 2, 2018

Name of Defendant to Be Served: State Farm Fire & Casualty Co.

Address of Defendant to Be Served: 300 Kimball Drive, Parsippany, N.J. 07054

NOTE: The Case Information Statement is available at [www.njcourts.com](http://www.njcourts.com)



Douglas J. Widman, Esq. (009671973)

**DAVISON, EASTMAN MUÑOZ**

**LEDERMAN & PAONE, P.A.**

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Attorneys for plaintiffs, Anthony J. Vitale, DMD and Personal Choice Dental Associates, PA

ANTHONY J. VITALE, DMD AND PERSONAL  
CHOICE DENTAL ASSOCIATES, PA,

Plaintiff,

v.

STATE FARM FIRE AND CASUALTY  
COMPANY,

Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
MONMOUTH COUNTY

DOCKET NO.:

CIVIL ACTION

**COMPLAINT and JURY DEMAND**

Plaintiffs, Anthony J. Vitale, DMD and Personal Choice Dental Associates, PA, by way of Complaint against Defendant, State Farm Fire and Casualty Company, say:

1. Anthony J. Vitale, DMD ("Dr. Vitale") is a natural person doing business at 400 Perrine Road, Suite 400A, Old Bridge, NJ 08857.
2. Personal Choice Dental Associates, PA ("Personal Choice") is a New Jersey professional association with a primary place of business located at 400 Perrine Road, Suite 400A, Old Bridge, NJ 08857.
3. State Farm Fire and Casualty Company ("State Farm") is a foreign insurance corporation licensed to sell and provide insurance in the State of New Jersey and doing business at 300 Kimball Drive, Parsippany, New Jersey 07054.
4. State Farm issued a Medical Office Policy to Personal Choice, policy number 90-05-5323-0, for the policy period August 7, 2015 through August 7, 2016 ("Personal Choice policy").
5. State Farm issued a Medical Office Policy to Dr. Vitale, policy number 90-B4-6062-4, for the policy period August 7, 2015 through August 7, 2016 ("Dr. Vitale policy").

6. Both the Personal Choice policy and the Dr. Vitale policy include 400 Perrine Rd., Suite 400A, Old Bridge, NJ 08857 (the "Business Premises") on their respective property schedules.

7. At all relevant times, Dr. Vitale and Personal Choice have operated a dental practice out of the Business Premises.

8. Both the Personal Choice policy and the Dr. Vitale policy include loss of income and extra expense coverage.

9. More specifically, the Personal Choice policy and the Dr. Vitale policy provide that in the event that Dr. Vitale or Personal Choice suffer a business interruption loss, State Farm will pay Dr. Vitale's and Personal Choice's actual business interruption loss.

10. On April 2, 2016, during the policy period of both the Dr. Vitale policy and the Personal Choice policy, a catastrophic flood occurred at the Business Premises.

11. Due to the catastrophic flood, Dr. Vitale and Personal Choice's business operations at the Business Premises were interrupted.

12. State Farm admitted that a business interruption, as defined by the Dr. Vitale policy and the Personal Choice policy, had occurred as a result of the catastrophic flood and began making indemnity payments on or about April 25, 2016.

13. Although the Dr. Vitale policy and the Personal Choice policy unambiguously provide for business interruption coverage paying the actual business interruption loss, State Farm arbitrarily and capriciously ended coverage on or about October 31, 2016, even though at that time and for a time after that date, both Dr. Vitale and Personal Choice continued to suffer business interruption losses.

14. State Farm justified discontinuing indemnity payments to Dr. Vitale and Personal Choice by asserting, in a letter dated December 10, 2016, that "it was agreed that mold formed in the office due to an unrelated prior leak from the dental vacuum equipment which was later spread by ServPro during the mitigation efforts following the water heater leak," an assertion which is pure speculation on the part of State Farm.



15. Indeed, State Farm substituted its guesswork for an investigation which State Farm was obligated to undertake as Dr. Vitale and Personal Choice's insurer.

16. Had State Farm diligently investigated the claim presented by Dr. Vitale and Personal Choice, it would have concluded that Dr. Vitale and Personal Choice's business interruption losses continued to accrue after October 31, 2016 and by discontinuing payments at that time, breached its obligations under the Dr. Vitale policy and the Personal Choice policy.

**FIRST COUNT**  
**Breach of Contract**

17. Dr. Vitale and Personal Choice repeat and reallege paragraphs 1 through 16 of this complaint as if fully set forth herein at length.

18. Under the Dr. Vitale policy and the Personal Choice Policy, State Farm was expressly obligated to thoroughly investigate Dr. Vitale and Personal Choice's claim and to make good on its express promise to pay covered losses in a timely fashion.

19. By failing to pay Dr. Vitale and Personal Choice's actual loss in connection with the catastrophic flood, State Farm has breached its contract with Dr. Vitale and Personal Choice

**WHEREFORE**, plaintiffs, Anthony J. Vitale, DMD and Personal Choice Dental Associates, PA, hereby demand judgment against defendant, State Farm Fire and Casualty Company, along with an award of costs and attorneys' fees and for such other and further relief the court deems just and proper.

**SECOND COUNT**  
**Bad Faith**

20. Dr. Vitale and Personal Choice repeat and reallege paragraphs 1 through 19 of this complaint as if fully set forth herein at length.

21. State Farm failed to diligently investigate Dr. Vitale and Personal Choice's claim.

22. Had State farm diligently investigated Dr. Vitale and Personal Choice's claim, State Farm would have concluded that the water damage and mold infiltration at the Business Premises was casually linked to the catastrophic flood of April 2, 2016 and Dr. Vitale and Personal Choice continued to suffer

actual business interruption losses long after October 31, 2016, at which time State Farm discontinued paying indemnity.

23. At the time Dr. Vitale and Personal Choice purchased the Dr. Vitale policy and the Personal Choice policy from State Farm, they placed their trust in State Farm and its employees to act in good faith and in a reasonable manner in the event they should ever make a claim against such insurance.

24. State Farm and its employees were in a fiduciary relationship with Dr. Vitale and Personal Choice and were under a duty to use the skill, care, and knowledge of other claims representatives and underwriters practicing as insurance claims representatives and underwriters in evaluating and investigating claims made by Dr. Vitale and Personal Choice in a prompt and thorough manner.

25. Dr. Vitale and Personal Choice relied on State Farm to investigate and inform them accordingly as to their insured status with respect to their claims related to the catastrophic flood.

26. State Farm and/or its employees either intentionally or, in the alternative, negligently failed to investigate Dr. Vitale and Personal Choice's claim in a prompt and thorough manner as they were required to do and, as a direct and proximate result, Plaintiff has suffered monetary damages and will suffer monetary damages in the future.

**WHEREFORE**, plaintiffs, Anthony J. Vitale, DMD and Personal Choice Dental Associates, PA, hereby demand judgment against defendant, State Farm Fire and Casualty Company along with an award of costs and attorneys' fees and for such other and further relief the court deems just and proper.

**THIRD COUNT  
Declaratory Judgment**

27. Dr. Vitale and Personal Choice repeat and reallege paragraphs 1 through 26 of this complaint as if fully set forth herein at length.

28. The business interruption losses Dr. Vitale and Personal Choice suffered as a result of the catastrophic flood constitute a "loss of income" under the Dr. Vitale policy and Personal Choice policy.

29. No exclusions apply to the catastrophic flood loss under either the Dr. Vitale policy or the Personal Choice policy.

30. Nonetheless, State Farm has wrongfully declined to indemnify Dr. Vitale and Personal Choice for their entire business interruption loss.

31. Accordingly, Dr. Vitale and Personal Choice seek a judgment from the court declaring that State Farm has a duty to indemnify Dr. Vitale and Personal Choice with regard to all their business interruption losses relative to the catastrophic flood.

**WHEREFORE**, plaintiffs, Anthony J. Vitale, DMD and Personal Choice Dental Associates, PA, hereby demand judgment against State Farm proving the following relief:

- a. A declaration that State Farm has a duty to indemnify Anthony J. Vitale, DMD and Personal Choice Dental Associates, PA for all their business interruption losses in connection with the April 2, 2016 catastrophic flood;
- b. Awarding attorney's fees and costs to Anthony J. Vitale, DMD and Personal Choice Dental Associates, PA for bringing the within action; and
- c. Granting such other and further relief as this court deems appropriate and just.

**JURY DEMAND**

A demand is hereby made for a trial by jury.

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Douglas J. Widman, Esq., is hereby designated as trial counsel on behalf of the plaintiffs, Anthony J. Vitale, DMD and Personal Choice Dental Associates, PA.

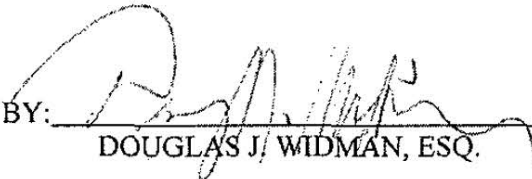
**CERTIFICATION PURSUANT TO R. 4:5-1**

Pursuant to R. 4:5-1, the undersigned certifies that to the best of his knowledge, the within matter in controversy is not the subject of any other action pending in any other Court, or of a pending arbitration



proceeding, nor is any action or arbitration proceeding contemplated nor are other parties required to be joined in this action.

**DAVISON, EASTMAN, MUNOZ,  
LEDERMAN & PAONE, P.A.**

BY:   
DOUGLAS J. WIDMAN, ESQ.

Dated: March 30, 2018